

H 135 – Idaho Brokerage Services Legislation (effective 7/1/07)

What changes are contained in H 135? H 135 amends the “customer duty” and “client duty” sections to provide that:

1. If the brokerage has a written agreement for agency representation, **or** has a customer services/compensation agreement, the brokerage SHALL have the obligation to provide specific services, namely:

“To be available to the customer/client to receive and timely present all **written** offers and counteroffers.”

2. The duty is mandatory and **may not be waived – even by agreement** between the brokerage and his customer/client.

What services are required? The duty requires only limited services – to be available to receive and timely present *written* offers & counteroffers. The brokerage is not required to negotiate, facilitate communications, answer questions, or explain any offer or proposed counteroffer. Furthermore, the brokerage is required “to be available” only if and when there is an actual written offer or counteroffer.

Who is entitled to these services? The brokerage must provide these services to all “clients.” The brokerage must also provide these services to any “customer” with whom the brokerage has a compensation agreement. The brokerage does NOT have a duty to provide these services to customers with whom it has no compensation agreement (e.g., the FSBO – unless or until they enter a compensation agreement), or to buyers who have not entered any agreement with the brokerage.

What other duties does a broker have under Idaho law? The broker will continue to have other statutory duties with respect to any offer he receives. For instance, Section 54-2051 requires that upon receipt of the offer, the broker shall (1) as promptly as practical, tender the written offer to his seller or buyer; (2) “immediately” provide a copy of the offer to the buyer as a receipt; (3) make certain that all offers are complete and contain the statutorily-required terms; and (4) ensure that all changes are properly initialed. It is unclear whether the broker is required to “obtain” the signed, accepted offer, but if and when he does, he is required to provide copies to the buyer and seller.

“Be available” – just what does *that* mean?? No definition is provided in the legislation or current license law. However, it probably means at a minimum that the Broker let interested buyers know how to contact him to present their offers. The License Law currently allows for offers and counter offers to be electronically transmitted, faxed, or delivered by methods as agreed by the parties, so that the broker does not have to receive the offer/counteroffers in person. See section 4-2052, Idaho Code. The federal “E-Commerce” and “E-Sign” laws likewise require states to allow transactions to be conducted by electronic means.

What is considered “timely” under this law? Again, no definition or specific time frames are provided in the statute. A broker’s duty to be available to receive and “timely present” offers should take into consideration the surrounding circumstances, including the available means of transmission and communication of such offers.